

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 6484 of 1995

For Approval of Signature :

Hon'ble MR. JUSTICE N.J. PANDYA and Sd/-

MR. JUSTICE A.R. DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgments ?
 2. To be referred to the Report or not ?
 3. Whether Their Lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge ?
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Appearance :

Mr M.R. Anand, Govt. Pleader with Mr A.J. Desai, A.G.P. for the Appellants.

Mr A.J. Patel, Advocate for the Respondent.

Coram : N.J. PANDYA & A.R. DAVE, JJ.

Date of Decision : 3rd August, . 1996

Oral Judgment : (Per Pandya, J.)

Admit. With the consent of the parties, the appeal is taken for final hearing.

2. This appeal arises out of an award by learned Assistant Judge, Mahesana given in Reference Case No. 366 of 1989. The notification under sec. 4 was issued on 1.3.1979 and with reference to that date, the learned trial Judge accepted the claim of the respondent claimants to the extent of Rs. 20/- per sq.mtr. against the prayer for Rs. 30/- per sq.mtr. and additionally allowed compensation for bordi (berrey) trees as well as other fruit bearing trees etc. to the tune of

Rs.1,31,440/-

3. The learned trial Judge had before him an earlier award of acquisition relating to land of village Kadi, where Rs. 20/- per sq.mtrs. were awarded.

4. While considering that, in para 18 of the judgment, the learned trial Judge has also chosen to go by yield method because according to the claimants entire land under acquisition was developed as an orchard of fruit bearing trees. The trees were bordi (berrey) and mangoes. On that base, according to the claimants, the value was worked out and the learned trial Judge after appreciating the evidence and independent of that Kadi award came to the conclusion in para 19 of the judgement that yield value comes to Rs.2/- per sq.mtr. and giving multiple of 10 it works out to Rs. 20/- per sq.mtr. The compensation awarded by the Land Acquisition Officer was only Rs.0.55 per sq.mtr.

5. We agree with the learned Govt. Pleader Shri Anand that the land of village Kadi and the land under acquisition of village Budasan cannot be compared. Shri Anand is right in further submitting that value of the land of village Budasan is not higher and specially when but for the claimant having developed the land with fruit bearing trees, there would have hardly been any yield.

6. However, the acquiring body or the authority, as the case may be, has to take the claimant as he is. If the claimant has by dint of his labour and industry developed the lands, the lands will have to be evaluated accordingly.

7. In the trial Court, the claimants had come out with a case from the beginning that bordi trees were more than 1100 in number which possibly looking to the extent of the area, viz. almost 10 vigha cannot be ruled out. As against that the acquiring body had produced receipt showing that when the possession of the land in question was taken, only 173 bordi trees are shown to be there.

8. The 7/12 extracts produced at Exh. 17 clearly show that after the year 1975, the entire area was covered by bordi trees and that position continued right upto the year 1981 when possession was taken on or about 15.6.1981.

9. The aforesaid claim as to number of trees is not based only on oral assertion. The claimant, Shantibhai Devrajbhai, at Exh. 21 has stated it categorically

supported by witness No. 2 Ganeshbhai Kevaldas at Exh. 38.

10. The last mentioned witness happens to be neighbour of the claimant and was one of the panchas of panchnama drawn in respect of Criminal Case No. 817/81. This complaint was with regard to unlawful encroachment in the disputed land on or about 25.6.1981 on which date the panchnama was drawn.

11. While supporting the judgment the learned Advocate Mr A J Patel has drawn our attention to the fact that the panchnama has not been exhibited due to oversight. The proof has been adduced. This proof is in the form of the testimony of the said panch witness Ganeshbhai Kevaldas at Exh. 38. It being a certified copy fulfills the requirement of Sec. 65 and 66 of the Evidence Act. As to circumstances being brought on record permitting the production of secondary evidence a Clerk of Kadi Court Dipakkumar Bhaishankar Dave was examined at Exh. 40. He has stated that the original panchnama has been destroyed under the provisions of Criminal Manual. Five years period having expired, alongwith the other documents, this panchnama came to be destroyed.

12. The certified copy, therefore, ought to have been accepted. It clearly shows that the number of bordi trees were almost 1138 and the said receipt Exh. 54 on the other hand shows the total number of bordi trees by 173 only.

13. Taking the figure of 200 bordi trees for calculation purpose, if the value is worked out accordingly, oral evidence of the claimant, said panch witness Ganeshbhai Kevaldas as well as Prahladbhai Madhavlal Patel Exh. 41 on the yield basis is quite clear that the figure of Rs.16/- per sq.mtr. can be worked out as market value. This figure is worked out on the basis that bordi trees are only 200 in number and controversy of there being trees more than in number is left out for the time being. There is a gap of almost 1 to 8 if the said panchnama and other evidence on record is taken into consideration on one hand and the said receipt Exh. 54 is considered on the other.

14. Therefore, there was scope for the claimant to make an attempt for working out the additional compensation or enhanced compensation on the basis of more number of bordi trees. However, he has chosen to accept the figure of Rs. 20/- worked out by the trial

Court.

15. To this, we will have to add wood value of bordi trees as well as mango trees. The yield from mango tree has also been added to work out the said figure of Rs. 16/-. If the wood value is added on the basis of the Government publication of the year 1989 where circulars are compiled starting from the year 1962 to 1985 for working out the value of the wood obtained from different trees, it comes to more than Rs.20,000/- and when Rs. 9,000/- and odd is awarded, the Trial Court left out Rs. 11,000 as balance. In this background, the over all value of Rs. 20/- taken as market value per sq.mtr. in our opinion, will have to be confirmed.

16. At the same time, what is required to be slashed down is the exercise in duplication, evidence from para 21 of the judgement. The yield from bordi trees have been taken as basis. The value of bordi trees and other fruit bearing trees can not be worked out on that very basis and awarded separately over and above the land price worked out by the trial Court as mentioned above.

17. The fact of the exercise done by the trial Judge in para 21 of his judgment is to work out the price of the land on the basis of the yield obtained from fruit bearing trees and then take that very basis for working out the value of the trees separately. Obviously it is giving one and the same amount twice over. If any authority in this regard is required, we have AIR 1969 SC 255. We, therefore, strike down the figure of Rs.1,31,440/- given by the Trial Court as additional compensation. The appeal is allowed to that extent. Rest of the order is confirmed.

18. The appellants are directed to deposit the amount within a period of six weeks from today. In the circumstances there would be no order as to costs.
